87-1272 (1)

Supreme Court, U.S.
FILED
DEC 22 1987
JOSEPH F. SPANIOL, JR.
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No.....

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

JOHN RANDOLPH PEEPLES, JR.,

PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOHN R. PEEPLES, JR.
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43pp

prefix

QUESTION PRESENTED FOR REVIEW

Was petitioner denied Constitutional guarantees which are a restraint upon the Federal Government affording protection against arbitrary and unfair procedures in judicial or administrative proceedings which affect the personal and property rights of a citizen?

The opportunity to appear before an impartial judge or jury?

To be presumed innocent until proven guilty by legally-obtained evidence?

To have the verdict supported by the evidence presented?

To be free from bonded slavery or involuntary servitude?

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JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on September 23, 1987 affirming and imposing sanctions on an appeal from a Tax Court decision of December 16, 1986 upholding a statutory notice of deficiency and imposing sanctions. The issues as to which the petitioner seeks this Court's review involve the Constitutional guarantees constructed in the Due Process Clause of the Fifth Amendment (Bill of Rights) ratified effective December 15, 1791 as a restraint upon the Federal Government. This clause affords protection against arbitrary and unfair procedures in judicial and administrative proceedings which affect the personal and property rights of a citizen. The opportunity to appear before an impartial judge or jury, to

be presumed innocent until proven guilty by legally-obtained evidence and to have the verdict supported by the evidence presented are repeatedly recognized within the protection of the Due Process Clause. Also provided are basic protections whereby governments are prevented from adopting arbitrary and unreasonable measures which would violate individual rights. We look no further than 1215 when the English barons forced King John to sign the Magna Carta and a succession of thirteenth-century charters that reiterated the Magna Carta's principals. These documents have become a source of basic liberties in the Anglo-American political tradition; by establishing the principal that the king must obtain his subject's consent before he could levy taxes, the barons declared that, like all other men, the king was subject to law. In the

same respect the Fifth Amendment of the U.S. Constitution declares that the Commissioner of Internal Revenue is also subject to law.

Amendment V. ...nor be deprived of life, liberty, or property, without due process of law;...

Amendment XIII. Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

OPINION BELOW

The Court of Appeals entered its Memorandum decision affirming the denial of Petitioner's motion to reverse the tax court's decisions on September 23, 1987. A copy of the memorandum is attached in the Appendix

STATEMENT OF THE CASE

Appeal was from a Tax Court decision upholding an Internal Revenue Service (IRS) deficiency determination for tax years 1982 and 1983.

The deficiencies were based an a naked assessment an not supported by any evidence, nor was a source of income alleged.

Petitioner being overwhelmed and confused by the tax laws and on the advice of an attorney exercised his Fifth Amendment Right to protect himself on his tax returns.

Petitioner had also relied on page 14 of his Citizen's Guide to Individual Rights Under the Constitution of the United States of America, prepaired by the Subcommittee on Constitutional Rights of the Committee on the Judiciary United States Senate Ninety-Fourth Congress Second

Session Fifth Edition October 1976 "one is not excused from filing a tax return because it is incriminatory; the privilege must be asserted on the return or it will be waved."

In a previous tax court hearing the hearing officer stated that this was not a court, but an agency of Congress whose job was to create revenue - they did not have to comply with the law - they made their own rules. This was after petitioner had objected to unsworn request of the commission on the grounds that request for admissions were to be treated as evidence on the level of testimony and therefore had to be sworn to.

The record indicates that petitioner was charged tax on a imaginary income that was not derived from any source in effect an arbitrary bonded slavery tax. The government struck down a citizen in an unfair

proceeding as a reprisal for exercising a Constitutional Right. The statement by tax court hearing officer Lapsley W. Hamblen, Jr. on February 27, 1984 puts into words the animus of unfairness that exist in proceedings involving the Internal Revenue Service.

REASON FOR GRANTING THE WRIT

The United States Court of Appeals for the Fourth Circuit has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the U.S. Tax Court, as to call for exercise of this Court's power of supervision.

ARGUMENT

Where petitioner is entitled to Constitutional guarantees as a restraint upon the Federal and State Governments, respectively:

The clause affords protection against arbitrary

and unfair procedures in judicial or administrative proceedings which affect the personal and property rights of a citizen. The opportunity to present evidence in one's own behalf before an impartial judge or jury, to have the verdict supported by the evidence presented are rights repeatedly recognized within the protection of the Due Process Clause. (Citizen's Guide --- Constitution of the United States of America --- October 1976)

CONCLUSION

For the foregoing reasons, petitioner, John Randolph Peeples, Jr., respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit and issue instructions prohibiting the Internal Revenue Service from rendering decisions that are not supported by the evidence presented, therefore selling citizens into bonded slavery, and require the Internal Revenue Service to conduct proceedings in an atmosphere of fairness.

Respectfully submitted,

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December 23, 1987

Appendix

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-1053

John Randolph Peeples, Jr.,

Petitioner - Appellant,

versus

Commissioner of Internal Revenue,

Respondent - Appellee.

On Appeal from the United States Tax Court. Joan Seitz Pate, Special Trial Judge. (5779-86)

Submitted: July 30, 1987 Decided: September 23, 1987 Before PHILLIPS, ERVIN and CHAPMAN, Circuit Judges.

(John Randolph Peeples, Jr., Appellant Pro Se. Murray S. Horwitz; William Sears Estabrook, III, U. S. Department of Justice; for Appellee)

PER CURIAM:

John R. Peeples, Jr., is a tax protester who challenges a Tax Court decision upholding a statutory notice of deficiency and imposing sanctions.

Peeples's tax protester arguments on appeal present no colorable issue. This Court has twice rejected Peeples's argument that he is entitled to rely on the Fifth Amendment in refusing to complete his tax forms. Peeples v. Commissioner, 771 F.2d 77 (4th Cir. 1985); Peeples v. Commissioner, No. 84-1589 (4th Cir. Dec. 20, 1984) (unpublished). Because this appeal to this Court is frivolous, we grant the government's motion to impose sanctions. Fed. R. App. P. 38; 28 U.S.C. Sec. 1912. We award the amount of $1,500 to the United States in lieu of particularized fees and costs.* We dispense with oral argument because this appeal is frivolous. Fed. R. App. P. 34(a)(1).

AFFIRMED AND

SANCTIONS IMPOSED

* We note that this Court has awarded lump sum sanctions in Leining v. Commissioner, No. 86-1253 (4th Cir. July 21 1987) (unpublished); United States v. Bowser, No. 86-1241 (4th Cir. April 22, 1987) (unpublished); United States v. Wissig, No. 86-1188 (4th Cir. Dec. 29, 1986) (unpublished); Chapman v. Egger, No. 86-2151 (4th Cir. Oct. 21, 1986) (unpublished); Jensen v. United States, No. 86-1504 (4th Cir. June 25, 1986) (unpublished), motion for accounting and cert. denied, -- U.S. --, 55 U.S.L.W. 3278 (Oct. 20, 1986). See also Leogrande v. United States, ,811 F.2d Cir. 1987) (imposing $3,000 lump sum sanctions).

NOTICE OF APPEAL

Docket No. 33131-83

UNITED STATES TAX COURT

WASHINGTON, D.C. 20217

JOHN RANDOLPH PEEPLES, JR., PETITIONER,

V.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

Notice is hereby given that John R. Peeples, Jr. hereby appeals to the United States Court of Appeals for the Fourth Circuit from the decision of this administrative court entered in the above captioned proceeding on the 16th day of December, 1986 relating to 1982 and 1983 Federal income and self-employment taxes plus all additions, damages, interest and penalties.

March 9, 1987

John R. Peeples, Jr.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-1053

Peeples v. Commissioner

1. Did the tax court fail to consider important grounds for relief? Yes.

If so, what grounds?

Testimony established that the petitioner's entire support was provided by relatives and friends. The Commissioner of Internal Revenue issued a notice of deficiency based on U.S. Labor Department, Bureau of Labor Statistics but failed to itemize or even allege any source of this additional income. The Fifth Amendment of the U.S. Constitution is a restraint upon the Federal Government it affords protection against arbitrary and unfair procedures in judicial and administrative proceedings which affect the personal and property rights of a citizen. The opportunity

to present evidence in one's own behalf before an impartial judge or jury, to be presumed innocent until proven guilty by legally-obtained evidence and to have the verdict supported by the evidence presented are repeatedly recognized within the protection of the Due Process Clause. Also provided are basic protections whereby Governments are prevented from adopting arbitrary and unreasonable measures which would violate individual rights. We look no further than 1215 when the English barons forced King John to sign the Magna Carta and a succession of thirteenth-century charters that reiterated the Magna Carta's principals. These documents have become a source of basic liberties in the Anglo-American political tradition; by establishing the principal that the king must obtain his subjects' consent before he could levy taxes,

the barons declared that, like all other men, the king was subject to law. In the same respect the U.S. Constitution declares that the Commissioner of Internal Revenue is also subject to law.

2. Did the tax court incorrectly decide the facts? Yes.

If so, what facts?

The judge erred in finding that the petitioner received taxable income during 1982 and also in 1983. The judge erred in finding that petitioner is liable for failure to file timely returns for 1982 and 1983. The judge erred in finding that the proceedings were instituted primarily for delay and that petitioner's position is both frivolous and groundless. Testimony established that during 1982 and 1983 petitioner did not receive any taxable income and occupied himself with making artistically designed iron gates for

his parents with whom he lived and was not required to file income tax returns.

3. Do you think the tax court applied the wrong law? Yes.

If so, what law do you want applied?

The Due Process Clause of the U.S. Constitution requires judgments to be supported by the evidence presented and prohibits arbitrary measures which would violate individual rights. The Thirteenth Amendment of the U.S. Constitution prohibits slavery and involuntary servitude, this includes bonded slavery to our government.

4. Do you feel that there are any other reasons why the tax court's judgment was wrong? Yes.

If so, what?

The proceedings were not conducted in an atmosphere of fairness. The Tax court went out of its way on a perverted psychological

binge by appointing a female special trial judge who had the same name as the petitioner's mother's maiden name and then subjected the petitioner to a preceding that was conducted in the form of an inquisition where the judge sat on the bench in tears and sobbing motions while the government lawyer lamblasted the petitioner with questions covering a decade and a half of his personal life and on-lookers were encourages to 'ooh-and-aah in unison. In addition this conduct is considered cruel and unusual punishment.

5. What action do you want the Court to take in this case?

To vacate the judgment of the tax court and set aside the notice of deficiency. To issue an injunction prohibiting the Commissioner of Internal Revenue from threatening, harassing, and attempting to sell the petitioner into bonded slavery forever.

To disband the U.S. tax court and abolish it from the face of the earth for eternity.

6. If you think the Court should hear oral argument in this case, why do you think so? This Court has no way to conceive of the atmosphere in which the proceedings were conducted.

John R. Peeples, Jr.

Mailed: April 1, 1987

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MEMORANDUM OPINION

T. C. Memo. 1986-584

UNITED STATES TAX COURT

JOHN R. PEEPLES, JR., Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

John R. Peeples, Jr., pro se.

Thomas R. Thomas, for the respondent.

PATE, Special Trial Judge: This case was heard pursuant to the provisions of section 7456(d) (redesignated as sec. 7443A by the Tax Reform Act of 1986, Pub. L. 99-514, section 1556, 100 Stat. ---) Rules 180, 181 and 182.*1

Respondent determined the following deficiences in and additions to petitioner's Federal income and self-employment taxes for the years 1982 and 1983:

	1982	1983
Deficiency	$3,155.36	$3,101.30

Additions to Tax		
sec. 6651(a)(1)	788.84	775.32
sec. 6653(a)(1)	157.77	155.07
sec. 6653(a)(2)	*	*
sec. 6654	307.16	189.75

* Fifty percent of the interest due on the underpayment of $3,155.36 for 1982 and $3,101.30 for 1983.

In addition, respondent asks this Court to award damages to the United States under section 6673.

Petitioner filed a Form 1040 for the year 1982 on which he listed his name, address, and social security number and indicated his filing status as single during that year. On all other lines he entered the word "REFUSED." Under the jurat on page 2 he stated that

Refusals under right [sic] of the Fifth Amendment to the Constitution (Ref. Garner v. US, 424 US 648, 96 S Ct 1178 1976)

Although the record does not contain petitioner's Form 1040 for 1983, petitioner testified that he filed on containing essentially the same information for that year.

On a notice of deficiency dated December 4, 1985, respondent determined that petitioner had unreported business income of $13,929 for the year 1982 and $14,388.25 for the year 1983. The basis of the determination was explained as follows:

In the absence of adequate records, your taxable income is figured on the basis of the U.S. Labor Department, Bureau of Labor Statistics for the tax years 1982 and 1983. Accordingly, your taxable income has been increased $13,929.00 and $14,388.25 for the years 1982 and 1983, respectively.

After allowing a $1,000 exemption for each year,

respondent computed petitioner's income tax using the tax table applicable to single individuals.

Respondent also computed self-employment tax on petitioner's unreported business income.

On March 5, 1986, petitioner filed a timely petition with this Court 2 alleging that: the notice of deficiency is arbitrary and excessive and, therefore, the burden of proving he had taxable income rests with the respondent; he had not taxable income for the years ending December 31, 1982 and 1983; he had filed his income tax returns within the time prescribed by law; he had been harassed, threatened and intimidated by respondent; respondent had attempted to sell petitioner into bonded slavery in violation of the Thirteenth Amendment; respondent denied him due process of law by

not providing him with an administrative appeal; he was denied equal protection of the law; and the notice of deficiency was a sham, frivolous and not reasonably related to a reasonable purpose. Petitioner was a resident of Sumter, South Carolina at the time he filed his petition.

At trial, petitioner testified that he was in the art business and engaged in welding, cutting and making artistically designed iron gates. However, he denied receiving any gross income from this activity. He did not submit any books, records or other substantive evidence to show the extent of his business, the amount of his income, or the nature and amount of any expense he may have incurred in pursuing this activity. Moreover, although petitioner was in his mid-thirties during the years in issue, owned an

automobile and was licensed to pilot an airplane, petitioner testified that his entire support was provided by relatives and friends. He did not produce any corroborating witnesses.

In the absence of books and records, respondent may reconstruct a taxpayer's income by any method which is reasonable. Holland v. United States, 348 U.S. 121 (1954); Cupp v. Commissioner, 65 T.C. 68, 82 (1975), affd. by an unpublished opinion 559 F.2d 1207 (3d Cir. 1977). Respondent determined petitioner's income using data from the U. S. Labor Department, Bureau of Labor Statistics for the taxable years in issue. This method has been upheld when the taxpayer has not filed a return and refuses to cooperate in the ascertainment of his income. Pollard v. Commissioner, 786 F.2d 1063, 1066 (11 Cir. 1986), affg. T.C. Memo. 1984-536; Giddio v. Commissioner,

54 T.C. 1530, 1532-1533 (1970).

Once respondent determines a deficiency, the taxpayer has the burden of proving that respondent's determination is erroneous. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a). Except for his self-serving testimony (which we find incredible), petitioner did not submit any evidence of his income or deductions for 1982 and 1983. Accordingly, we find petitioner has failed to carry his burden of proving that his taxable income was less than the amount shown on the notice of deficiency.

We will not devote much time to addressing petitioner's "tax protest" arguments since he has presented these same arguments to this Court twice before with respect to his taxable years 1977, 1978, 1979, 1980 and 1981.[3] He is now before us again, with regard to his taxable

years 1982 and 1983, on almost identical facts. Therefore, we will only summarily point out that: (1) the income tax is constitutional, Brushaber v. Union Pac. R.R. Co., 240 U.S. 1 (1916); (2) petitioner cannot validly claim the protection of the Fourth or Fifth Amendment under the circumstances present in this case, Steinbrecher v. Commissioner, 712 F.2d 195 (5th Cir. 1983), affg. T.C. Memo. 1983-12; McCoy v. Commissioner, 696 F.2d 1234 (9th Cir. 1983), affg. 76 T.C. 1027 (1981); White v. Commissioner, 72 T.C. 1126, 1130 (1979); and (3) petitioner was not denied due process of law, Ginter v. Southern, 611 F.2d 1226 (8th Cir. 1979). We consider the balance of his arguments as so ridiculous that they do not warrant any discussion. Besides, petitioner has heard all of this many times before.

Further, we find that petitioner is liable for the additions to tax under section 6651(a)(1) for failure to file timely returns for 1982 and 1983. We repeatedly have held that a Form 1040 that does not contain any information relating to the taxpayer's income is not a return within the meaning of section 6011, sec. 1.6011(b), Income tax Regs.; United States v. Porth, 426 F.2d 519, 523 (10 Cir. 1970); Kotmair v. Commissioner, 86 T.C. 1253, 1259 (1986); Thompson v. Commissioner, 78 T.C. 558, 561-562 (1982). For a document to constitute a tax return, it must purport to by a return, it must represent an honest and genuine endeavor to satisfy the requirements for a return, it must contain sufficient data from which the Commissioner can compute and assess the taxpayer's Federal income tax liabilities and it must be executed under penalties

of perjury. Automobile Club of Michigan v. Commissioner, 353 U.S. 180, 188 (1957); Peeples v. Commissioner, 771 F.2d 77 (4th Cir. 1985); Edwards v. Commissioner, 680 F.2d 1268 (9th Cir. 1982). Petitioner's Form 1040 does not meet these requirements.

In addition, respondent determined that petitioner is liable for the additions to tax under section 6653(a)(1) and (2) for negligence or intentional disregard of the rules and regulations. The addition to tax provided under section 6653(a) is not applicable where there exists a "bona fide dispute which presents substantial issues of law and fact." Scot v. Commissioner, 61 T.C. 654, 664 (1974). Petitioner's claim that disclosure of financial information required on Federal income tax forms would violate his Fifth Amendment right against self-incrimination does

not qualify as such a dispute. Accordingly, we hold that petitioner's underpayments for 1982 and 1983 resulted from negligence or intentional disregard of rules and regulations and, therefore, petitioner is liable for the additions to tax under section 6653(a). See Beard v. Commissioner, 82 T.C. 766, 780 (1984), affd. per curiam 793 F.2d 139 (6th Cir. 1986).

Respondent also determined that petitioner is liable for the additions to tax under section 6654 for underpayment of estimated taxes. The provisions of section 6654 are mandatory without consideration of reasonable cause unless petitioner brings himself within one of the statutory exceptions. Grosshandler v. Commissioner, T.C. 1071, 1072 (1960). Since petitioner has not offered any evidence which would bring him within any of

the exceptions, we hold that he is liable for the additions to tax under section 6654. Habersham Bey v. Commissioner, 78 T.C. 304, Finally, we must determine whether the United States is entitled to an award for damages under section 6673. This Court is permitted to award damages up to $5,000 where we find that the proceedings were instituted or maintained by the taxpayer primarily for delay or where the taxpayer's position in such proceedings is frivolous or groundless. Sydnes v. Commissioner, 74 T.C. 864, 870-873 (1980), affd. 647 F.2d 813 (8th Cir. 1981). At trial, petitioner continued to rely on the same "tax protester" type arguments he has presented and which have been rejected several times before. In addition, we find his testimony that he had no gross income incredible. The record is clear that petitioner has abused the process

of this Court and has wasted its resources. We conclude, therefore, that the proceedings herein were instituted primarily for delay and that petitioner's position is both frivolous and groundless. Accordingly, we award damages to the United States under section 6673 in the amount of $5,000. Abrams v. Commissioner, 82 T.C. 403 (1984).

Decision will be entered for the respondent.

*1 Unless otherwise stated, all section references are to the Internal Revenue Code of 1954, as amended, and all rule references are to the Tax Court Rules of Practice and Procedure.

*2 The petition was mailed on March 3, 1986. A petition mailed within 90 days of the issuance of the notice of deficiency

is deemed timely filed. See secs. 6213 and 7502.

+3 Petitioner's first case, involving the years 1977, 1978 and 1979 (docket No. 29345-81) was dismissed pursuant to Rule 104 for failure to obey an Order of this Court on March 28, 1984. The Fourth Circuit affirmed this dismissal in an unpublished opinion filed December 20, 1984 (docket No. 84-1589). In the second case filed December 20, 1984 (docket No. 841589). In the second case involving the years 1980 and 1981, this Court granted respondent's motion for summary judgment in a bench opinion rendered on January 30, 1985 in Peeples v. Commissioner, docket No. 33131-83. Petitioner also appealed this case and the Fourth Circuit affirmed in a per curiam decision, Peeples v. Commissioner, 771 F.2d 77 (4th Cir. 1985). In this decision, the Fourth Circuit also affirmed

a United states District Court opinion upholding a frivolous return penalty imposed under section 6702 with regard to petitioner's 1982 income tax return.

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing petition for writ of certiorari to the United States Court of Appeals for the fourth circuit in the Supreme Court of the United States has been made upon the respondent, Roger Milton Olsen, Esq., and Michael Lee Paup, Esq., Council, by mailing three copies thereof on this 22nd day of December, 1987, in an envelope, with postage prepaid, properly addressed to them as follows:

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John Randolph Peeples, Jr., Petitioner